

September 18, 2009

MINUTES  
ILLINOIS CIVIL SERVICE COMMISSION  
September 18, 2009

I. OPENING OF MEETING AT 11:05 A.M. AT 160 NORTH LASALLE STREET,  
SUITE S-901, CHICAGO, ILLINOIS

II. PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba (via telephone), and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director (via telephone); Jan Oncken, Illinois Department of Central Management Services; Bridget Devlin, Illinois Department of Commerce and Economic Opportunity; and Kevin McClain, Illinois Law Enforcement Training and Standards Board.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD AUGUST 21, 2009

**IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND THE MOTION ADOPTED 4-0 TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD AUGUST 21, 2009.**

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

**A. Report on Exempt Positions**

<u>Agency</u>	<u>Total Employees</u>	<u>Number of Exempt Positions</u>
Aging .....	162.....	9
Agriculture .....	578.....	17
Arts Council.....	21.....	2
Capitol Development Board .....	45.....	0
Central Management Services .....	1,471.....	119
Children and Family Services .....	3,096.....	49
Civil Service Commission .....	4.....	0
Commerce & Economic Opportunity .....	439.....	70
Commerce Commission.....	72.....	0
Corrections.....	11,509.....	116
Criminal Justice Authority .....	57.....	6
Deaf and Hard of Hearing Comm. ....	7.....	1
Developmental Disabilities Council .....	9.....	1
Emergency Management Agency .....	97.....	6
Employment Security.....	1,961.....	25
Environmental Protection Agency .....	970.....	19
Financial & Professional Regulation .....	511.....	41
Gaming Board.....	79.....	6
Guardianship and Advocacy .....	112.....	8
Healthcare and Family Services.....	2,406.....	28
Historic Preservation Agency .....	347.....	12
Human Rights Commission .....	14.....	2
Human Rights Department .....	148.....	10
Human Services .....	13,973.....	77
Insurance.....	222.....	10
Investment Board.....	3.....	2
Juvenile Justice .....	1,229.....	20
Labor.....	81.....	7
Labor Relations Board Educational .....	12.....	2
Labor Relations Board State .....	18.....	2
Law Enforcement Training & Standards Bd.....	19.....	1
Medical District Commission .....	2.....	0
Military Affairs .....	126.....	3
Natural Resources .....	1,571.....	24
Pollution Control Board .....	19.....	2
Prisoner Review Board .....	20.....	0
Property Tax Appeal Board .....	24.....	1
Public Health.....	1,129.....	44
Racing Board .....	2.....	0
Revenue .....	2,023.....	64
State Fire Marshal .....	145.....	13
State Police .....	1,386.....	6
State Police Merit Board.....	6.....	1
State Retirement Systems .....	83.....	2
Transportation.....	2,326.....	0
Veterans' Affairs.....	1,183.....	7
Workers' Compensation Commission .....	168.....	10
<b>TOTALS .....</b>	<b>49,885.....</b>	<b>845</b>

**B. Governing Rule - Jurisdiction B Exemptions**

- a) Before a position shall qualify for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the position shall be directly responsible to:
  - 1. The Governor, or
  - 2. A departmental director or assistant director appointed by the Governor, or
  - 3. A board or commission appointed by the Governor, or
  - 4. The head of an agency created by Executive Order, or the director or assistant director of an agency carrying out statutory powers, whose offices are created by the Governor subject to legislative veto under Article V, Section 11, of the Constitution of 1970, which agency head, director, or assistant director may themselves be subject to exemption under Section 4d(3), or
  - 5. In an agency having a statutory assistant director, a deputy director exercising full line authority under the director for all operating entities of the agency, provided the statutory role of assistant director is vacant or is assigned clearly distinct and separate duties from the deputy director and as a colleague to him, or
  - 6. A line position organizationally located between the director and/or assistant director and a subordinate statutorily exempt position(s), provided the position proposed for exemption has line authority over the statutory exempt position(s), or
  - 7. The elected head of an independent agency in the executive, legislative, or judicial branch of government.
  
- b) If a position meets the above criterion, it must, in addition, be responsible for one or more of the following before it shall be approved as exempt:
  - 1. Directs programs defined by statute and/or departmental, board, or commission policy or possess significant authority when acting in the capacity of a director of programs to bind the agency.
  - 2. Makes decisions in exercising principal responsibility for the determination or execution of policy which fix objectives or state the principles to control action toward operating objectives of one or more divisions, such decisions being subject to review or reversal only by the director, assistant director, board, or commission.
  - 3. Participates in the planning and programming of departmental, board, or commission activities, integrating the plans and projections of related divisions, and the scheduling of projected work programs of those agencies.

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**C. Requests for 4d(3) Exemption**

- Regarding Item C, Executive Director Daniel Stralka reported that this request is for the Assistant Deputy Director of the Bureau of Energy Assistance in the Department of Commerce and Economic Opportunity (DCEO), a position that reports to the Deputy Director who in turn reports to the agency Director. To meet the reporting requirement, this Deputy Director would have to be considered the equivalent of a statutory assistant director.

The agency expanded the Bureau of Energy Assistance due to Executive Order #2 of 2009 which transferred the Low Income Home Energy Assistance Program (LIHEAP) and the Illinois Home Weatherization program from Department of Healthcare and Family Services to DCEO. With the addition of these new programs, DCEO reorganized this Bureau into an independent Bureau which it believes warrants a 4d(3) Assistant Deputy Director. DCEO presently has seven such Bureaus with 4d(3) assistant deputy directors. Many of these are the same positions that were up for rescission last month and were continued until November's meeting. Its justification for this request is solely the addition of these two programs, though it is not specifically putting them under this position. Rather, it is giving this position broad but significant policy-making and implementing responsibilities over all programs within the Bureau as well as the authority to serve as the Deputy Director in his or her absence. This is similar to other Assistant Deputy Directors in the agency that have previously been approved for 4d(3) exemption so the Staff recommended approval of this request. Executive Director Stralka noted that it does not appear that the Department of Healthcare and Family Services had a 4d(3) exempt position directly responsible for these programs while under its authority.

Bridget Devlin added that with the addition of funding from the American Reinvestment and Recovery Act, the number of grantees under these programs is increasing from 30 to 200. She also noted that the Bureau structure has the Deputy Director located in Chicago while this Assistant Deputy Director position will be located in Springfield.

- As to Item D, Executive Director Stralka reported that this request is for the Deputy Director of the Illinois Law Enforcement Training & Standards Board, a position that reports to the Executive Director. This position is the only Deputy Director position at the Board and has principal policy responsibility for training programs and the general operation of the Board as well as its chief labor relations administrator and personnel officer. For these reasons, the Staff recommended approval of this request. Kevin McClain, Executive Director of the Board, confirmed these representations. Upon inquiry from Commissioner Peterson as to the skills required for this position, Kevin McClain indicated that the successful candidate will have prior experience serving as a Sheriff or other chief law enforcement officer.
- As to Item E, Executive Director Stralka indicated that the agency had requested that this matter be continued until the October meeting and the Staff concurred with this request.

Executive Director Stralka then noted that Commission Staff has traditionally been more wary of exemption requests for positions such as Items C and E – Assistant Deputy Directors of agency programs – that are two levels removed from an agency director simply due to the statutory requirement that all exemption requests be for “principal” policy developers or implementers. Due to the existence of a Deputy Director for the program which has already been granted 4d(3) exempt status, it can prove difficult to identify the basis for exemption for the Assistant Deputy Director in such cases. As a general principal, the further removed a position is from the Director the less likely it is to be able to satisfy the “principality” requirement. While such requests have been approved over the life of the Personnel Code, the recent increase in the State Labor Board approving bargaining units that include such positions – and the fact that the State Labor Board has not been excluding 4d(3) positions from these bargaining units – has added another dimension to the Staff analysis of these positions. That is to inquire whether the position is the subject of a bargaining unit petition or has been included in a bargaining unit. As a general principle, inclusion of a position in a bargaining unit will preclude a favorable Staff recommendation on any 4d(3) request.

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO GRANT AND CONTINUE THE REQUESTS FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS:**

**The following 4d(3) exemption requests were granted on September 18, 2009:**

**C. Illinois Dept. of Commerce and Economic Opportunity**

Position Number	40070-42-05-000-05-01
Position Title	Senior Public Service Administrator
Bureau/Division	Bureau of Energy Assistance
Functional Title	Assistant Deputy Director
Incumbent	Vacant
Supervisor	Deputy Director, who reports to the Director
Location	Sangamon County

**D. Illinois Law Enforcement Training and Standards Board**

Position Number	40070-50-88-100-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Administration
Functional Title	Deputy Director
Incumbent	Vacant
Supervisor	Executive Director
Location	Sangamon County

**The following 4d(3) exemption request was continued on September 18, 2009:**

**E. Illinois Department of Public Health**

Position Number	40070-20-09-200-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Office of Preparedness & Response
Functional Title	Division Chief for Disaster Planning & Readiness
Incumbent	Vacant
Supervisor	Deputy Director who reports to the Director
Location	Sangamon County

V. CLASS SPECIFICATIONS

- None submitted

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.**

VI. MOTION TO GO INTO EXECUTIVE SESSION

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE THE MOTION ADOPTED 5-0 TO HOLD AN EXECUTIVE SESSION PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), AND 2(c)(11) OF THE OPEN MEETINGS ACT.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

VII. RECONVENE MEETING

Upon due and proper notice the regular meeting of the Illinois Civil Service Commission was reconvened at 160 North LaSalle Street, Suite S-901, Chicago, Illinois at 11:32 a.m.

PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba (via telephone), and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; and Andrew Barris, Assistant Executive Director (via telephone).

VIII. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e., emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code, however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Department of Central Management Services' Consecutive Non-Merit Report.

Agency	7/31/09	<b>8/31/09</b>	8/31/08
Aging	1	<b>1</b>	0
Agriculture	1	<b>5</b>	3
Arts Council	0	<b>0</b>	1
Central Management Services	1	<b>0</b>	3
Children and Family Services	11	<b>10</b>	7
Criminal Justice Authority	1	<b>1</b>	1
Employment Security	10	<b>10</b>	7
Healthcare and Family Services	12	<b>13</b>	13
Historic Preservation	1	<b>1</b>	0
Human Services	1	<b>1</b>	3
Investment Board	0	<b>0</b>	1
Natural Resources	40	<b>37</b>	25
Property Tax Appeal Board	2	<b>2</b>	1
State Fire Marshal	0	<b>1</b>	0
State Retirement Systems	0	<b>0</b>	1
Transportation	2	<b>8</b>	15
Veteran's Affairs	1	<b>1</b>	0
Workers' Compensation Commission	0	<b>0</b>	4
<b>Totals</b>	<b>84</b>	<b>91</b>	<b>85</b>

IX. PUBLICLY ANNOUNCED DECISIONS RESULTING FROM APPEAL

• DISCHARGE

DA-19-09

Employee	Lawrence D. Dickens	Appeal Date	12/02/08
Agency	DHS	Decision Date	09/04/09
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Conduct unbecoming a state employee	Recommended Decision	Charges are proven but warrant 90-day suspension.

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGE FOR DISCHARGE WAS PROVEN BUT WARRANTS A 90-DAY SUSPENSION BECAUSE OF THE UNIQUE FACTUAL CIRCUMSTANCES SURROUNDING THE DISCHARGE (INCLUDING DICKENS' 18 YEARS OF CONTINUOUS SERVICE, HIS ACCEPTABLE PERFORMANCE RECORD, HIS DISCIPLINE HISTORY AS ANALYZED IN THE RECOMMENDED DECISION AND THE FACT HE SOUGHT VOLUNTARY COUNSELING).**

**THE AGENCY'S RESPONSE FILED SEPTEMBER 15, 2009 TO THE RECOMMENDED DECISION OF THE ADMINISTRATIVE LAW JUDGE REFERENCES A PROVISION OF THE HEALTHCARE WORKER BACKGROUND CHECK ACT THAT PROHIBITS THE AGENCY FROM RETAINING IN EMPLOYMENT ANY INDIVIDUAL CONVICTED OF DOMESTIC BATTERY AS THE RESPONDENT WAS IN THIS APPEAL. DICKENS FILED A HANDWRITTEN REPLY TO THIS DOCUMENT OBJECTING TO THE AGENCY'S ATTEMPT TO INTRODUCE NEW EVIDENCE AND ARGUMENT IN THIS MATTER THROUGH ITS RESPONSIVE BRIEF.**

**DICKENS' OBJECTION IS WELL TAKEN. THE RECORD INDICATES THAT NO REFERENCE TO ANY PROVISION OF THE HEALTHCARE WORKER BACKGROUND CHECK ACT WAS MADE DURING THE HEARING OR CLOSING STATEMENTS. PRIOR TO THE ORAL CLOSING STATEMENTS, THE ADMINISTRATIVE LAW JUDGE CLOSED THE PROOFS BY STATING THAT THE RECORD WAS COMPLETE. THEREFORE, ANY REFERENCE TO THE HEALTHCARE WORKER BACKGROUND CHECK ACT IN THE AGENCY'S RESPONSE TO THE RECOMMENDED DECISION OF THE ADMINISTRATIVE LAW JUDGE IS STRICKEN AS BEING UNTIMELY AND AS NOT BEING IN ACCORDANCE WITH PRINCIPLES OF DUE PROCESS AND GENERALLY RECOGNIZED PRINCIPLES OF ADMINISTRATIVE LAW SINCE DICKENS WAS NOT PROVIDED AN OPPORTUNITY TO RESPOND**

**TO THE AGENCY’S ARGUMENTS IN FAVOR OF ITS APPLICATION IN THIS MATTER. IN ADDITION, THE AGENCY NEVER MADE A MOTION TO REOPEN THE PROOFS FOR THIS NEW EVIDENCE TO PROPERLY BE MADE PART OF THE RECORD.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

- **DISCHARGE**

**DA-39-09**

Petitioner	LaWand Lampkins	Appeal Date	05/26/09
Agency	DHS	Decision Date	09/04/09
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Conduct unbecoming a state employee	Recommended Decision	Charges are proven and warrant discharge.

**IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION THAT THE WRITTEN CHARGES FOR DISCHARGE HAVE BEEN PROVEN AND DO WARRANT DISCHARGE FOR THE REASONS SET FORTH IN THE RECOMMENDED DECISION DATED SEPTEMBER 4, 2009.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

X. **APPEALS DISPOSED OF WITHOUT DECISION ON THE MERITS**

- **DISMISSED**

**RV-41-08**

Employee	Gregory D. Douglas	Appeal Date	4/09/08
Agency	CMS	Decision Date	8/26/09
Type	Rule Violation	ALJ	Andrew Barris
Allegation	Violation of Section 304.10 Public Records	Proposed Finding	Dismissed subject to Commission approval; withdrawn.

- **DISMISSED**

**DA-45-09**

Employee	David A. Adams	Appeal Date	6/16/09
Agency	DES	Decision Date	8/13/09
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Violation of Code of Ethics	Recommended Decision	Dismissed subject to Commission approval; withdrawn (settled).

**IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGES' PROPOSED FINDING AND RECOMMENDED DECISION TO DISMISS THE APPEALS OF GREGORY DOUGLAS AND DAVID ADAMS.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

XI. **REPORT ON THE TREATMENT OF PRIOR DISCIPLINARY INCIDENTS WHICH ARE THE SUBJECT OF PENDING GRIEVANCES**

It was the consensus of the Commission that this matter be carried over until the October 16, 2009 meeting.

XII. **STAFF REPORT**

Executive Director Daniel Stralka reported that:

- He met with Chad Fornoff, Executive Director of the Executive Ethics Commission, and Ray Watson, Executive Director of the Secretary of State Merit Commission to discuss recent amendments to the Ethics Act and how they affect the Civil Service Commission. He then subsequently met with representatives of the Governor's legislative office to discuss various legislative initiatives and issues.
- The SECA campaign began September 11 and concludes on November 6. Beckie Daniken, our agency's SECA representative, will be forwarding pledge forms which may be turned in at the October meeting.

September 18, 2009

XIII. ANNOUNCEMENT OF NEXT MEETING

Announcement was made of the next regular meeting to be held on Friday, October 16, 2009 in the Commission's Chicago office.

XIV. MOTION TO ADJOURN

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO ADJOURN THE MEETING AT 11:36 A.M.**